

CLASS ACTION DEFENDANT IN DEFAULT IS NOT ENTITLED TO 60(B) RELIEF

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On January 31, 2011, the Indiana Court of Appeals affirmed a trial court that refused to grant relief under [Trial Rule 60\(B\)](#) to a class action defendant against whom a default judgment had been granted in [JK Harris & Co., LLC v. Sandlin](#), Case No. 49A05-1003-CT-184. The lesson to be learned here is that the courts aren't going to cut you too many breaks if they have to padlock your offices to get your attention.

JK Harris is a nationwide tax resolution firm based in South Carolina with six locations in Indiana. An Indiana resident was informed that he was delinquent in payment of his federal income tax and contracted with JK Harris to obtain a resolution of that dispute. JK Harris was unable to achieve a reduction in the debt and refused to refund the customer's fee. The customer then filed a four-count class action complaint against JK Harris. JK Harris did not respond to the complaint and an appearance was not entered on its behalf.

The plaintiff then moved for class certification and default judgment and the trial court granted both motions. The judge ordered that JK Harris provide the plaintiff with certain information necessary to provide notice to the class, but JK Harris never did so. The plaintiff then moved for an award of damages and for a show cause order. The trial court granted the show cause order, which was served both in Indiana and in South Carolina; JK Harris did not respond. The trial court then ordered a writ of attachment for each of JK Harris's six Indiana offices and awarded attorney fees.

After its Indiana offices were closed by the trial court, JK Harris first appeared in the case. It moved to set aside the default judgment, the class certification, and to compel arbitration, among other relief. The trial court denied all of JK Harris's motions and stayed execution of its judgment pending an interlocutory appeal.



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On appeal, JK Harris argued that the trial court abused its discretion by not granting it 60(B) relief. The Court held that JK Harris had waived the precise arguments that it made on appeal, because it had not made those same arguments in the trial court. The Court, nevertheless, addressed those arguments. It held that JK Harris was not entitled to relief under Rule 60(B)(1) because it had been properly served with a copy of the brief and, because it was in default, it did not need to be served with any other filing.

Because JK Harris failed to file an appearance or answer to Sandlin's complaint, the trial court was not required to serve its subsequent notices and orders on JK Harris. We note that despite proper service of process of Sandlin's complaint, JK Harris apparently concluded that it was not worth its time and effort to respond in any manner until its Indiana offices had been padlocked by the Marion Superior Court.

The Court was also not inclined to be receptive to JK Harris's arguments under Rule 60(B)(8).

JK Harris's arguments in this regard show only that it consciously ignored the Marion Superior Court for approximately five and one-half months and then hired able counsel to attempt to remove it from the deep procedural and substantive hole of its own making. Any "extraordinary circumstances" it might and does allege to satisfy the requirements of Trial Rule 60(B)(8) are circumstances that would have been avoided with a timely responsive pleading after initial service of the complaint on JK Harris's registered agent in August, 2009. JK Harris simply ignored the pending litigation until its offices were closed by order of the trial court. These are not "extraordinary circumstances" within the meaning of Trial Rule 60(B)(8).

JK Harris then argued that the trial court should have dismissed the complaint and ordered the parties to binding arbitration because the contract between the parties provides that any dispute or controversy must be resolved in binding arbitration. While the Court recognized the general rule favoring arbitration, it held that it can be waived.

Despite the well-established rule that parties may waive their right to compel arbitration, JK Harris argues that "[e]ven upon default, the trial court was required to comply with the four corners of the contract and enforce the terms of the contract confessed, including ordering arbitration[.]" In other words, JK Harris argues that the trial court was required to affirmatively protect its contractual interests even though JK Harris chose not to participate in the litigation. This argument is completely without merit in our adversarial system of justice. Under the circumstances and facts of this case, JK Harris waived its right to compel arbitration.

Finally, JK Harris argued that the trial court erred by not setting aside the class certification. Again, the Court disagreed. While recognizing that a trial court must conduct a rigorous analysis when determining whether to certify a class, it held that a defendant's participation in that process was no necessary to ensure that this rigorous analysis has taken place.

JK Harris's argument that we should set aside the class certification because the trial court failed to conduct the "rigorous analysis" required by [Trial Rule 23](#) is unavailing given its failure to participate in the litigation. Like the plaintiff in *Core*, Sandlin's complaint included the allegations necessary to support a class action under Trial Rule 23. As evidenced by its order certifying the Plaintiff Class, the trial court's analysis of the class certification question was as thorough as it could be without JK Harris's participation.

Now that JK Harris was participating in the proceedings, the Court held that discovery should proceed, so the class could be more properly defined.

Hopefully, none of our regular readers will make the mistake that JK Harris made in this case. Courts will not look kindly upon a defendant who only responds to litigation after being held in contempt of court. It is unclear if there was any kind of explanation JK Harris could have provided for its failure to respond to the action, but Indiana lawyers advising corporations should make sure that those corporate entities have efficient ways of informing the responsible people within those corporations of pending litigation. Otherwise, your client may have a certified class action pending against them.

Lessons:

1. Lack of notice of particular proceedings is not a basis of relief for a defendant in default who was properly served with a complaint.
2. Circumstances are not extraordinary under Rule 60(B)(8) if they could have been avoided by timely responding to legal filings.
3. Not responding to a lawsuit for an extended period of time can result in the waiver of an arbitration clause.
4. A defendant's participation in class certification proceedings is not necessary to ensure that the trial court has conducted a rigorous analysis of the class certification motion.

